* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : March 13, 2007.
% Date of Decision : April 20, 2007.

\+ W.P.(C) 8363/2006.

\# HIGHBROW EDUCATION SOCIETY (Regd.) ..... Petitioner.
! Through Mr.Sandeep Sethi, Sr. Advocate with
Mr. Rajneesh Chopra, and Mr. Rajat Joseph, Advocates.

versus

$ LT. GOVERNOR & ORS. ..... Respondent.
^ Through Mr. C. Mohan Rao, Advocate for DDA
with Mr.O.P.Misra, OSD (Land), DDA with records.
Ms.Iram Majid Advocate and Ms. Zubeda Begum
Advocate for R-1 to 3.

CORAM :-
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. This petition arises out of a letter dated 30.5.2003 written by the Delhi Development Authority ('DDA') to the petitioner informing the petitioner that the allotment of land measuring 5676 sq.m at Preet Nagar, CHBS for construction of a middle school stood withdrawn "since this site already stands allotted to the Directorate of Education, Government of Delhi, for setting up of Senior Secondary School in 1989." In the same letter it was mentioned that "an alternative plot of land is therefore to be identified for allotment to your Society." The

petitioner's grievance in this writ petition is that the DDA has not yet identified and allotted an alternative plot to it despite the above letter dated 30.5.2003.

2. The petitioner is a charitable non-profit organisation and its object is providing education by setting up educational institutions. The petitioner's case for allotment of land was sponsored by the Government of NCT of Delhi, (Respondent No.2) and the Directorate of Education (Respondent No.3) after issuance of an essentiality certificate under Rule 44 of the Delhi School Education Act. By its letter dated 28.3.2003 the DDA allotted to the petitioner plot measuring 5676 sq.m in Preet Nagar, CHBS. Thereafter on 30.5.2003 the allotment was withdrawn for the reasons stated hereinabove.

3. The petitioner claims that thereafter it kept writing to the respondents on 23.12.2003, 24.3.2004 and 7.3.2005. No reply was received from the DDA to any of these letters. It is stated that at one time the DDA had identified land at Madhuban for allotment to the Society but no definite decision was taken despite assurances. With a view to avoiding a demand for higher rates at a later date, the petitioner voluntarily deposited a sum of Rs. 60,96,696 on 27.5.2005 with the DDA. Further representations were made on 3.6.2005 and

7.11.2005.

4. On 22.12.2005, the DDA wrote to the petitioner reiterating that the allotments made earlier stood withdrawn informing it that the amount of Rs.60,96,696 deposited by the petitioner on 27.5.2005 was at its own risk and that as far as the DDA was concerned the allotment ceased to exist with effect from 30.5.2003. The money was sought to be refunded. When all efforts to get the land allotted to it failed, the petitioner filed the present petition.

5. A detailed order was passed by this Court on 2.2.2007 and the said order reads as under:

> "2.2.2007
>
> Present: Mr. Sandeep Sethi Sr. Advocate with Mr. Rajat Joseph, Advocate for the petitioner.
> Ms. Iram Mazid and Ms. Zubeda Begum, Advocate for the respondent no. 1 to 3.
> Mr. C. Mohan Rao Advocate for respondents no. 5 and 6.
>
> **WP(C) No.8363/2006**
> This petition is a challenge to the action taken by the Delhi Development Authority as communicated to the petitioner by letter dated 30.5.2003 withdrawing the allotment of land. The operative portion of the said letter reads as under:
> "In suppression of office letter dated 28.03.2003, I am directed to inform you that the Hon'ble Lt. Governor has been pleased to withdraw the allotment of land measuring 5676 sq. mts allotted

in favour of your society in Preet Nagar CHBS for construction of middle school. Since this site already stands allotted to the Directorate of Education, Govt. of Delhi for setting up of senor secondary school in 1989, an alternate plot of land is therefore to be identified for allotment to your society. Under the circumstances, you are not required to deposit the cost of the land as communicated vide this office demand cum allotment letter dated 28.03.2003."

It is the case of the petitioner that although the above letter specifically stated that alternate plot of land would be identified for allotment no such alternate plot has been allotted despite representations made by it. This has led to the present writ petition.

A reply affidavit dated 10.1.2006 has been filed on behalf of respondents no. 4 and 5 by Shri O.P. Mishra, OSD (Land), Delhi Development Authority. An assertion is made in the said affidavit in para 5 that the allotment made earlier on 28.3.2003 was illegal and procured by the petitioner "with the connivance of some senior officers of the answering respondent against whom action had been initiated". It is further asserted that while the officers were proceeded against, "the petitioner at whose instance illegalities have been committed, escaped scot free and has the temerity to seek the assistance of this Hon'ble Court concealing the material facts from this Hon'ble Court".

Mr. C. Mohan Rao, learned counsel for the DDA also draws attention to para 8 of the counter affidavit which reads as

under:

"The circumstances, under which the allotment came to be made in favour of the petitioner society were investigated by the CBI and a report was submitted to the Vigilance Department of the answering respondent."

Mr. Rao states that the report stated to have been submitted to the Vigilance Department was not perused by him when this reply affidavit was prepared and states that it is also not available as part of the record brought to the Court today.

In order to ascertain if what is stated in the counter affidavit is borne out by the record, the Court perused the record produced by Mr. Rao. The Court is constrained to observe that the counter affidavit prepared and filed on behalf of DDA does not correctly reflect what is contained in the record. The Court takes a serious view of the matter. The Court also notes the verification of the said affidavit which states that what has been stated is true to the deponent's knowledge. On the next date of hearing Mr. O.P. Mishra, OSD (Land) will be personally present in the Court to explain on what basis the statements extracted above have been made in the affidavit particularly they are not substantiated by the record brought to the Court.

The report stated to have been submitted by Vigilance Department of the answering respondent to which reference has been made in para 8 will also be brought to the Court for its perusal on the next date of hearing.

List on 13.3.2007.

The records brought today also be kept ready for perusal.

Order dasti."

6. At the hearing on 13.3.2007 Mr. O.P.Misra, OSD (Land) was present with the records. This Court perused the records produced including the records of the Vigilance department of DDA. The Court is constrained to observe that there is nothing in these records that substantiates the plea of the respondent DDA in its counter affidavit that the allotment made earlier on 28.3.2003 was procured by the petitioner "with the connivance of some senior officers of the answering respondent." While the record does show that against some of the officers of the DDA disciplinary action has been initiated, they do not indict the petitioner in the manner suggested. As regards, the CBI report it does not form part of the DDA's records or the records of the vigilance department.

7. Mr. Mishra, the deponent of the affidavit on behalf of the DDA was repeatedly asked by the Court to explain the basis for the inference drawn by the respondent against the petitioner as stated in his affidavit. His answer was that the CBI report was confidential and could not be placed on record by the DDA. He however admitted that

this fact is not mentioned in any of the notes on file. During the course of hearing Mr. Mohan Rao sought to produce a copy of the CBI Report across the bar and insisted that the Court should peruse it. However, when pointedly asked if the CBI report implicated the petitioner in the manner suggested in the counter affidavit filed by Mr.Mishra, Mr.Rao answered in the negative. In that view of the matter, since the Court saw no purpose in perusing the CBI report, which in any event is claimed to be a 'secret' document. The officer of the vigilance department of the DDA who was also present in Court, was asked whether the DDA at any stage had filed or was contemplating filing of any criminal complaint against the petitioner. To this again the concerned office answered in the negative.

8. The net result is that the allegations made against the petitioner in reply affidavit dated 10.1.2006 has been filed on behalf of respondents no. 4 and 5 by Shri O.P. Mishra, OSD (Land), DDA is unsubstantiated by the records. The accusation that the petitioner connived with certain officials of the DDA to obtain an illegal allotment in its favour appears to be purely based on surmises and conjectures. While the records do show that the officers of the DDA whose names are mentioned in para 10 of the affidavit have been recommended for punitive action, as a result of investigations by the

CBI and the vigilance department of the DDA, the finding that their actions were to favour the petitioner is missing. To that extent Mr.Mishra's statements in para 10 is misleading. The other statements made in the affidavit also bear this out. In para 9 it is stated: "Apparently, some of the officers of the answering respondent attempted to show undue favours to the petitioner society by recommending and obtaining approval from the competent authority the allotment of land in Preet Vihar…" No source for this inference is indicated. Later in the same para it is stated: "Apparently, the petitioner managed to obtain such undue favour from the officers of the DDA itself shows the illegality of the allotment and the reasons for the same." For this statement again the source is not indicated. In para 5 it is stated: It is further asserted that while the officers were proceeded against, "the petitioner at whose instance illegalities have been committed, escaped scot free and has the temerity to seek the assistance of this Hon'ble Court concealing the material facts from this Hon'ble Court…" Unfortunately, such accusation against the petitioner is not supported by the record. Perhaps conscious of this the deponent Shri Mishra states in para12: "**While there is no documentary proof of the complicity of the petitioner**, the same is clear from the manner in which the allotment

was obtained by the petitioner society." (emphasis supplied)

9. Mr.Mishra confirmed to the Court that the affidavit dated 10.1.2006 had been prepared on his instructions and that he had read and understood its contents before appending his signatures on to it. He also confirms having signed the verification which declares that "the contents of the above affidavit are true and correct to the best of my knowledge, no part of it is false and nothing material has been concealed therefrom." In the absence of any material available in the record and the absence of the mention of the basis on which he drew the inferences mentioned above, the affidavit of Mr.O.P.Mishra and the verification of the affidavit in the above form is unacceptable.

10. The Court is constrained to express its disapproval of the conduct of Mr.O.P.Mishra, a senior level officer of the DDA swearing to an affidavit that contains incorrect and misleading statements and statements that are not supported by the records. Had the Court simply proceeded on Mr.Mishra's affidavit without examining the records itself, serious miscarriage of justice may have resulted. In ***A.K.K.Nambiar v. Union of India*** AIR 1970 SC 652, a Constitution Bench of the Hon'ble Supreme Court explained the significance of the verification of an affidavit in the following words:

> "11. The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence."

Later in ***Sukhwinder Pal Bipan Kumar v. State of Punjab*** AIR 1982 SC 65, the Hon'ble Supreme Court reiterated that (page 70) "It was incumbent upon the deponent to disclose the nature and source of his knowledge with sufficient particularity." Given that invariably all cases in the writ jurisdiction are decided on the basis of affidavits, the filing of affidavits that contain statements that are supportable by

either the records of the case or by the particular source of knowledge, indicated with sufficient clarity in the affidavit itself, becomes imperative. The affidavit of Mr.Mishra does not meet the above basic legal requirements.

11. Mr.Rao, the learned counsel for the DDA repeatedly submitted that this was a "CBI case" and that the petitioner did not deserve any relief whatsoever. While the Court understands the anxiety that informs the submission, particularly given that there is nothing in the record to implicate the petitioner, the Court does not view these words as mantras that should preclude an objective enquiry by a court. This Court, circumscribed by the scope of its powers and jurisdiction under Article 226, has to be satisfied that the decision of the authority under challenge before it is based on relevant materials and not on conjectures, surmises or no evidence at all. While the Court will certainly not want a litigant who is on the wrong side of the law to gain any unfair advantage using the process of law, it equally is duty bound to ensure that a party is not unfairly treated on account of a suspicion that cannot be substantiated. The petitioner here has not been implicated by the CBI or even the vigilance department of the DDA. Further, as already noticed, quite contrary to the statement in the counter affidavit here, no criminal complaint has been filed by the

DDA against the petitioner.

12. The Court finds that the erroneous approach of the DDA in the matter has precluded it from properly processing the assurance it gave the petitioner of allotment of an alternate plot in terms of its letter dated 30.5.2003. The Court concludes that the omission of the DDA to consider the petitioner's case for allotment of alternate land is, in the facts and circumstances, arbitrary and unreasonable and unsustainable in law.

13. For all of the above reasons, the writ petition is allowed and a direction is issued to the respondent DDA to proceed to process and dispose of the case of the petitioner for allotment of an alternate plot in terms of its letter dated 30.5.2003 within a period of 4 weeks from today and in any event not later than 21.5.2007. The decision of the DDA will be communicated to the petitioner within a further period of two weeks and in any event not later than 4.6.2007. The writ petition is allowed with costs of Rs.10,000 which will be paid by the DDA to the petitioner within a period of four weeks from today.

APRIL 20, 2007 **S. Muralidhar, J.**
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